IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.201 OF 2006

Car Mart Pvt.Ltd. & anr. ...Petitioners
vs.
Bombay Mercantile Co-operative
Bank Ltd. ...Respondent

Mr.D.D.Madan with Mr.B.R.Palav i/b M/s.Udwadia & Udeshi for the petitioners
Mr.Shailesh Shah i/b Mr.T.N.Tripathi for the respondent

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : FEBRUARY 6,2006

P.C.:

1. Heard Mr.Madan in support of this Petition and Mr.Shah for the Respondent. The order passed by the D.R.A.T. on 25th January 2006 in Appeal No.272 of 2004 is under challenge in this Petition. The Appellate Tribunal while confirming the order passed by the D.R.T. has held that no notice has been issued under Section 13(4) of the Securitizaion Act and therefore, it will be open to the Respondent to take an action after issuance of necessary notice. On issuing such notice, the Appellant will be at liberty to take necessary steps.

2. We have been shown the order passed by the Tribunal which was under challenge to the Appellate Tribunal. The Tribunal has recorded in paragraph 9 of its order that unless measures referred to in Section 13(4) are taken, the person cannot be said to be aggrieved to avail of the remedy under Section 17 of the said Act. The Appeal was dismissed being premature.

In the Appeal filed before the D.R.T. it has not been stated anywhere that the measure in the nature of taking possession either physical or formal has been resorted. That being so, what the Tribunal has observed in the order impugned before the Appellate Tribunal was correct. When the Appellate Tribunal observed that the notice under Section 13(4) of the said Act was required to be issued, what was contemplated was a measure under the said Act. Unless that measure was resorted to, notice cannot be issued.

3. In our opinion, the Appellate Tribunal was right in coming to the said conclusion. There is no merit otherwise in the Petition. Petition is rejected.

4. At this stage, Mr.Madan for the Petitioner submitted that only formal possession be taken and the Petitioner may not be ousted from her residential flat. We accept his request. The first Respondent-Bank will take only formal possession and for a period of four weeks after signing of documents for taking formal possession, Petitioner will not be evicted.

5. All submissions of both the parties will be available to them if the Petitioner is required to file an Appeal thereafter.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)